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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.857 OF 2007
IN
APPEAL LODGING NO.1067 OF 2006
IN
SUIT NO.2035 OF 1995

Union of India & Ors. ..Appellants

Versus

Godrej Industries Ltd. ....Respondents

Mr. M.I. Sethna, Senior Advocate with Mr. A.M. Sethna, Mr. S.D. Bhosale and Ms. S.I.Shah for the Appellants
Mr. D.R. Zaiwala, Senior Counsel with Mr. P.S. Colabawala i/b. Mulla & Mulla and C.B. & Caroe for Respondents.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 29th June, 2007

P.C.

. By the present application the Appellants seek condonation of 479 days delay in filing the Appeal. The suit was filed by the Respondents against the appellants before this Court on 13th July, 1984. On summons being served the Appellants put in their appearance on 23rd January, 1986. On that day a learned Judge of this Court passed the following order:-

> "Suit transferred to the list of Long Causes. Written Statement taken on file/to be filed within 8 weeks from today. Affidavit of document within 2 weeks thereafter. Inspection forthwith thereafter."

The matter thereafter did not come up, but for the first time came up for hearing before a learned Judge of this

Court on 22nd July, 2005. On that day on behalf of the Appellants learned Counsel sought time to file the written statement. The learned Judge observed that written statement has not been filed for 20 years and no cause is shown for non-filing of written statement. Hence request was rejected. Subsequent to the rejection of the application for inspection of time to file written statement the Court proceeded to decree the suit under Order 8 Rule 10 of the Code of Civil Procedure.

. An Appeal came to be preferred in which this application for condonation of delay. The various communications received and the steps taken have therein been set out. It is stated that the delay was on account of administrative reasons as explained in the affidavit. The same would amount to sufficient cause and consequently delay in filing the Appeal should be condoned and Appeal be registered and taken on file.

2. On behalf of the respondents a reply has been filed by Rathnakar Salian, General Manager (Corporate Services) contending that the cause shown would not amount to sufficient cause. The correspondence exchanged with the Ministry of Commerce and Ministry of law has been annexed. It is, therefore, submitted that there is absolutely no explanation for the inordinate delay when the Appellants themselves were aware that the decree has been passed and consequently they prayed that the Motion be dismissed.

3. Parties have referred to various judgments which will

be addressed to in the course of the discussion. From the record it is apparent that after the suit was decreed there is a delay of 479 days in preferring the Appeal. The respondents point out that on 7th December, 2005 they filed a pracipe in the Registry to fix a date and time to settle the draft decree and copy was forwarded to the Appellants Advocate. On 20th January, 2006 the respondent sent a letter to the appellants Advocate calling upon the appellant to pay the decretal amount along with interest from 13th July, 1984 till payment. By the letters dated 27/30th January, 2006 the Appellants advocate informed the respondents advocate that the suit papers were not traceable and requested for a copy of the plaint to ascertain their address so that the concerned Department can be directed to pay the said amount to the respondents. By communication of 31st January, 2006 the respondents Advocate informed the Appellants the address of the concerned Department. Reliance is then placed on the letter dated 6th February, 2006/13th February, 2006 by the Appellants' Advocate advising the appellants to make the payment as per the order dated 22nd July, 2005. On 10th March, 2006 the respondents Advocate informed the Appellants advocate that the respondent has not received the payment and calling upon the appellants to pay the respondent. On 16th March, 2006 the matter appeared on Board for settling the draft decree. None appeared for the appellant. The respondents Advocate was asked to give appellants advocate intimation about adjourned date for settling the draft decree. On 16th March, 2006 the respondents advocate gave notice to the appellants advocate that the adjourned date for settling the

decree was 5th April, 2006. On 16th March, 2006 the Ministry of Commerce forwarded letter dated 6th/13th February, 2006 to the office of the Deputy Secretary, Ministry of commerce and asked them to take immediate action under intimation to them. On 7th April, 2006 the respondents Advocate informed the Appellants Advocate that the decree is settled and requested the appellants to make payment. On 12th May, 2006 the appellants requested the respondents Advocate for copy of the order dated 22nd July, 2005. The Appellants officer, it is pointed out, took copy of the plaint and order dated 27th July, 2005 from the Respondents Advocate. There is one more letter dated 4th July, 2006 from the Respondents to the Appellants Advocate.

. On 19th September, 2006 the Chamber Summons No.1204 of 2006 was filed for amendment of the title in the plaint to change the name of the Respondents from Godrej Soaps Ltd. to Godrej Industries Ltd. On 9th October, 2006 the necessary amendments were carried out in the plaint. On 29th September, 2006 the execution proceedings was filed in respect of the movable and immovable properties of the appellants.

4. The question is whether the cause shown amounts to sufficient cause. In our opinion considering the law laid down by the Supreme Court in the matter of condonation of delay, there can be no hard and fast rule and the matter must be considered on the facts of each case bearing in mind ultimately to the ends of justice.

. In support of their contention that the cause shown amounts to sufficient cause the learned Counsel for the Appellant has drawn our attention to the Judgment of the Supreme Court in **State of Bihar vs. Kameshwar Prasad Singh & Anr., (2000) 98 SCC 74** to contend that the power to condone the delay in approaching the court has been conferred upon the Courts to enable them to do substantial justice to enable parties to get the matter disposed of on merits. A liberal approach, therefore, has been adopted. The object being dismissal of appeals on technical grounds would not advance the interest of justice, but admittedly result in failure of justice. Reliance next is placed on the judgment of the Supreme Court in the case of **M.K. Prasad vs. P. Arumugam, (2001)6 SCC 176.** On the facts of that case the Supreme Court was pleased to hold that failure to adopt extra vigilance should not be made a ground for ousting a party from a litigation, in particular where the inconvenience caused to the other party can be compensated by awarding appropriate and exemplary costs. Next reliance is placed on the judgment of the Supreme Court in **State of Nagaland vs. Lipok AO and Ors., (2005) 3 SCC 752** where that it has been reiterated once again, that what counts is not the length of the delay but the sufficiency of the cause. The Supreme Court referring to its earlier judgments observed as under:-

> "The expression "sufficient cause" is adequately elastic to enable the court to apply the laws in a meaningful manner which subserves the ends of justice- that being the life purpose for the

existence of the institution of courts. It is common knowledge that this Court has been taking a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common-sense, pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to e preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides.

A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

. The Supreme Court made it further clear that "the fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and

the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant.

5. On behalf of the respondents their learned Counsel relied on the judgment of a learned Single Judge in Laxman N. Divekar vs. State of Maharashtra, 1998 (3) Bom. C.R. 291, in the judgment of learned single Judge of the Allahabad High Court in Chamba Singh vs. State of U.P. & Ors., AIR 1973 Allahabad 552 and the judgment in M/s.Jyotsna Holding Pvt. Ltd vs. Union of India, 43 (1991) Delhi Law Times 7347. Reliance is also placed in the judgment in Ajit Singh Thakur Singh & Anr. vs. State of Gujarat, AIR 191 SC 733 which was a case of Appeal against acquittal under the provisions of the Criminal Procedure Code. Reliance is also placed on the judgment of the Supreme Court in State of Gujarat vs. Sayed Mohd. Baquir El Edross, AIR 1981 S.C.1921. That is a case where on facts the Court found that no cause was shown for condonation of delay for setting aside abatement.

. In our opinion the law declared by the Supreme Court and as set out earlier in the judgments cited on behalf of the respondents would make it clear that what the Court must examine is the sufficiency of the cause bearing in mind that its role is to do justice.

6. In the instant case from the facts and documents on record it is clear that the appellants were not aware from which Department the case was and a large part of the

correspondence on behalf of the respondents was addressed to

the Advocate for the Appellants.

. Another aspect of the matter is that the Appellant

was sued in the following name:-

Union of India through the Secretary,
Ministry of Commerce, Government of India,
New Delhi-110 1011.

It is pointed out that in fact the department concerned was the Director General of Foreign Trade. The mere fact that there was some correspondence directing that the amounts should be paid by itself cannot be held against the Appellants herein. The communication from the Ministry of Law to the Ministry of Commerce was based on the letter received by the Ministry from the Solicitors for the Respondents. In our opinion the cause as shown amounts to

sufficient cause.

. In the light of that delay condoned. In so far as

costs is concerned we shall consider the same at the hearing of the Appeal which is also on board. Office to Register the Appeal. Notice of Motion stands disposed of

accordingly.

(**F.I.REBELLO**, J)

(**R.M. SAVANT,J)**